IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 384 of 2006

ANANDI DEVI
V/S
LR'S OF MAGRAJ & ORS

Mr. SACHIN BHATI for Mr. JR PATEL, for the appellant / petitioner

Date of Order : 18.12.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant, and perused the impugned judgment.

The learned lower Appellate Court had found that as on the date of agreement the property was not in possession of Magh Raj as he had already sold away the property to defendant no.2, and the suit filed by Magh Raj for injunction was also withdrawn. In that view of the matter, the plaintiff has not been found entitled to specific performance of the agreement dt. 22.1.83. It has also been found that the plaintiff's counsel had also given notice to Magh Raj for damages on 23.7.83.

In my view, it clearly appears that after the property had been sold away by defendant Magh Raj, the

agreement to sale was executed in favour of the plaintiff, and theory of the plaintiffs having been delivered possession at the time of agreement ex facie does not inspire any confidence.

In these circumstances, I do not find any error in the decree passed by the learned lower Appellate court, when the plaintiff has already been decreed the amount paid along with interest @ 9 per cent.

The appeal is, therefore, dismissed summarily.

(N P GUPTA),J.

/Sushil/